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(R)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF JUNE, 1998

BEFORE

THE HON'BLE MR.JUSTICE V.K.SINGHAL

WRIT PETITION NUMBERS: 5650/1998, 2419-21/1998,

5087/1998, 7945/98, 8056/1998, 8328/98, 14997/98,

7518/98, 8329/98, 17828/98, 18754/98 and 18833-35/98

BETWEEN: W.P.5650/1998

M/S.Netley 'B' Estate,
Kanbailu Village,
Sunticoppa Nad, Somwarpet,
Kodagu District,
rep by its erstwhile partner
Sri.N.Ramanathan
55 yrs
s/o Sri.M.Nadarajan Chettiar,

PETITIONER

(By Sri.S.Parthasarathy, Adv.,
for Sri.S.Vijayashankar, AG

AND:

1. The Asst Commr of Agricultural
Income Tax,
Somwarpet.

2. The State of Karnataka
rep by its Secretary,
Dept of Finance,
Government of Karnataka
Vidhana Soudha,
Dr.Ambedkar Veedhi,
Bangalore-1.

(By Smt.S.Sujatha, HCGP)

W.P.No.2419-21/1998

M/S. Bajie Collie Saravana Estate,
PB No.48,
Pollibetta-571215,
South Coorg,
rep by its Managing Parnter,
Sri.RM Chockalingam,
40 years
s/o late Sri.AR Ramaswamy

PETITIONER

(By Sri.S.Parthasarathy,

AND:

1. The Asst. Commr of Agricultural
Income Tax , Virajpet.

2. The State of Karnataka
rep by its Secretary
Department of Finance,
Government of Karnataka
Vidhana Soudha
Dr.Ambedkar Veedhi
Bangalore-560001.

RESPONDENTS

(By Smt.S.Sujatha, HCGP).

W.P.NO: 5087/1998

M/S.H.Revannappa & Bros.
Coffee Planters,
Madabut Estate,
Narasimharajapura P.O. 577134,
Chikmagalur district.
Karnataka
rep by its Ex.Managing Partner,
Sri.H.B.Rahuveer,
aged about 37 years,
s/o H.Babanna.

PETITIONER

(By Sri.S.Parthasarathi, Adv.,)

AND:

1. The Asst Commr of Agricultural
Income Tax, II Circle,
Chickmagalur.

2. The Joint Commr., of Comm'l Taxes
(Appeals), Comm'l Tax Office,
Malnad Division
Malnad.

3. The State of Karnataka
rep by its Secretary
Dept of Finance,
Government of Karnataka
Vidhans Soudha,
Dr.Ambedkar Veedhi
Bangalore. 560001.

RESPONDENTS

(By Smt.S.Sujatha, HCGP)

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W.P.NO. 7945/1998

M/S.Dalquarren Estate,
10-13, Samarasa Villa,
Race Course Road,
Chettalli- 571248

Madikeri

rep by its erstwhile partner,

Sri.A.L.Alagappan

52 years

s/o of Sri.RM P.Alagappa.

PETITIONER

(By Sri.S.Parathasarathy, Adv.,)

AND:

1. The Asst. Commr., of Agricultural
Income Tax,
Madikeri.

2. The State of Karnataka
rep by its Secretary,
Dept of Finance,
Government of Karnataka,
Vidhana Soudha,
Dr.Ambedkar Veedhi
Bangalore-1.

RESPONDENTS

(By Smt.S.Sujatha, HCGP)

W.P.NO: 8056/1998

M/S.Sandalkad Estate,
Boikere (via)

Madikeri

rep by its erstwhile partner,

Mr.SB Giasuddin

53 years

s/o Janab Siddeek Haji

Bhauddin Saheb.

PETITIONER

(By Sri.S.Parthasarathy, Adv.,)

AND:

1. The Asst Commr of
Agricultural Income Tax,
Madikeri.

2. The State of Karnataka
by its Secretary, Finance Dept,
Government of Karnataka,
Vidhana Soudha
Bangalore-1.

RESPONDENTS

(By Smt.S.Sujatha, HCGP)

W.P.NO.8328/1998

M/S.Karrie Kollie 'A' Estate,
Suntikoppa
rep by its erstwhile partner
Sri- RM Meenakshi Sundaram
33 yrs
s/o late AL.RMRamanathan,Chettiar. PETITIONER

(By Sri.S.Parthasarathy, Adv.,)

1. The Asst Commr of Agricultural
IncomeTax,
Somwarpet.

2. The State of Karnataka
rep by its Secretary,
Dept of Finance,
Government of Karnataka
Vidhana Soudha
Dr.Ambedkar Veedhi
Bangalore- 560 001.

RESPONDENTS

(By Smt.S -Sujatha, HCGP)

W.P.NO.14497/1998

M/S.Wooligooly 'A'Estate.
Post Box No.31,
Suntikoppa 571237
North Kodagu
rep by its erstwhile
Managing Partner,
MR.H.M.A.Abdul Rehman,
38 years
s/o late H.M.Abdul Kadar, PETITIONER

(By Sri. S.Parthasarathy, Adv.,)

AND:

1. The Asst. Commr., of
Agricultural Income Tax,
Somwarpet.

2. The State of Karnataka
rep by its Secretary
Finance Dept
Vidhana Soudha
Bangalore-1.

RESPONDENTS

(By Smt.Sujatha, HCGP)

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W.P.NO.7518/1998

M/s. Marosa Estate,
K.Chettalli,
Madikeri
rep by its erstwhile partner,
Sri.S.M.SV.M.Muthappa Chettiar,
66 years,
s/o Sri.Sevugan Chettian.

PETITIONER

(By Sri.S.Parthasarathy, Adv.,)

AND:

1. The Asst Commr of Agricultural
Income Tax,
Madikeri.

2. The State of Karnataka
rep by its Secretary
Finance Department,
Government of Karnataka
Vidhana Soudha
Dr.Ambedkar Veedhi
Bangalore.

RESPONDENT

(By Smt.S.Sujatha, HCGP)

W.P.NO.8329/1998

M/S.Karrie Kolli 'B' Estate,
Suntikoppa
rep by its erstwhile partner,
Sri.RM.Alagappan
43 years
s/o late Sri.A.RM.Ramanathan
Chettiar.

PETITIONER

(By Sri.S.Parthasarathy, Adv.,)

AND:

1. The Asst. Commr., of Agricultural
Income Tax, Somwarpet.

2. The State of Karnataka
rep by its Secretary
Finance Department,
Vidhana Soudha, Bangalore-1.

RESPONDENTS

(By Smt.S.Sujatha, HCGP)

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W.P.No.17828/98 -6-

M/S.Wooligooly Estate,
Post Box No.31,
Suntikoppa 571237
North Kodagu
rep by its erstwhile
Managing Partner
Mr.HMA Abdul Rehman,
38 yrs,
s/o late H.M.Abdul Kadar.

PETITIONER

(By Sri.S.Parthasarathy, Adv.,)

AND:

1. The Asst., Commr., of
Agricultural Income-Tax,
Somwarpet.

2. The State of Karnataka
rep by its Secretary,
Finance Department,
Vidhana Soudha,
Bangalore-1.

RESPONDENTS.

(By Smt.S.Sujatha, HCGP)

W.P.NO.18754/1998

M/S.Aureen Rodrigues and others
Eliza 'B'Estate
Pollibetta Post,
Kodagu Dist.
rep by its partner,
Mr.Ivor Rodrigues , 39 years
s/o Mr.Michal Rodrigues.

PETITIONER

(By Sri.K.A.Hemraj, Adv.,)

AND:

1. The State of Karnataka
Finance Dept
Vidhana Soudha
Bangalore rep by its Secretary

2. Asst Commr of Agrl.
Income Tax, Virajpet,
Kodagu Dist.

RESPONDENTS

(By Smt.S .Sujatha, HCGP)

W.P. 18835/98

M/s. Karrie Kollie Estate,
10/3, Pottery Road,
Madikeri, rep. by its
erstwhile partner
Sri.A.L. RM.Nagappan,
38 years, S/o.AL. RMRamanathan-
Chettiar.

.. PETITIONER

(by Sri. S.Parthasarathy, Adv.)

AND

1. The Asst.Commissioner of
Agricultural Income Tax,
Madikeri.
2. The State of Karnataka
rep. by its Secretary,
Dept.of Finance, Govt.
of Karnataka,Vidhanasoudha,
Bangalore.

.. RESPONDENTS.

(By Smt. Sujatha, HCGP)

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All these petitions are filed under Articles 226 & 227 of the Constitution of India praying to declare the explanation to S.26(4) of the Act introduced retrospectively with effect from 1-4-75 by Karnataka Taxation Laws (Second Amendment) Act, 1997 Act No.18/97 as ultra vires and unenforceable and liable to be struck down insofar as it is contradictory and repugnant to S.26(4) and S.2(p) of the Act.

These petitions coming on for Preliminary hearing this day, the Court made the following:

O R D E R

Provisions of Section 26(4) and Explanation thereto of the Karnataka Agricultural Income Tax

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Act, 1957 have been assailed in all these writ petitions. Since the question involved is common, these petitions are disposed of by this common order.

2. The provisions of Sec.26(4) of the Act as they exist today were substituted ^{by Act No. 18/97} with effect from 1-4-1975 and are reproduced hereunder:

" (4) where any business through which agricultural income is received by a company, firm or association of persons is discontinued or any such firm or association is dissolved in any year, any sum received after the discontinuance or dissolution shall be deemed to be income of the recipient and charged to tax accordingly in the year of receipt if such sum would have been included in the total income of the person who carried on the business had such sum been received before such discontinuance or dissolution.

Explanation: For the removal of doubts, it is hereby declared that where before the discontinuance of such business or dissolution of a firm or association hitherto assessed as a firm or association, or as the case may be, on the company, the crop is harvested and disposed of, but full

payment has not been received for such crop, or the crop is harvested and not disposed of, the income from such crop shall, notwithstanding the discontinuance or dissolution be deemed to be the income of the company, firm or association for the year or years in which it is received or receivable and the firm or association shall be deemed to be in existence, for such year or years and such income shall be assessed as the income of the company, firm or association according to the method of accounting regularly employed by it immediately before such discontinuance or dissolution. "

Earlier Section 26(4) was in existence with more or less the same language except that the entity of company, firm or association of persons was added beside the word ' dissolution with discontinuance ' *in the amendment by Act No. 18/97.*

3. Clause 2(p) defining person was also amended and for the words ~~words~~ 'receptient of income from a firm which is dissolved or which has ^{dis-}continued the business through which agricultural income is received', the words " a ~~receptiv~~ ^{dis-}recipient of income from a firm or association of persons which is dissolved

or which has discontinued the business through which agricultural income is received" were substituted with effect from 1-4-1975. ^{by Act No 18 of 1975} The original definition of 'person' before its amendment was under :

" (p) "person" means any individual or association of individuals, owing or holding property for himself or for any other or partly for his own benefit and partly for another, either as owner, trustee, receiver common manager, administrator or executor or in any capacity recognised by law, and includes an individual Hindu Mitakshara family, an Aliyasantana family or branch, a Marumakkattayam tarwad or a tavazhi possessing separate properties, or a Nambudri or other family to which the rule of impartibility applies, a firm or company, an association of individuals, whether incorporated or not, recipient of income from a firm which is dissolved or which has discontinued the business through Agricultural income is received and any institution capable of holding property. "

4. The statement of objects and reasons with the Bill are as stated hereunder:

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" In view of the decision of the Hon'ble High Court of Karnataka in 2397/88 and other connected matters, it has become necessary to amend the Karnataka Agricultural Income Tax Act, 1957 retrospectively with effect from 1-4-1975 to facilitate assessment of income received after dissolution of a firm even though at the time of such assessment the firm stood dissolved."

IN L.P. CARDOZA & ORS. vs. AGRICULTURAL INCOME TAX OFFICER & ORS. (W.P. 2397/88 and connected cases) decided on 1-4-97 - 1997 -227 ITR 421, the provisions of Sec.26(4) before the present amendments were examined and it was held thus :

" A reading of Section 27 shows that under that provision the Officer can make the assessment of the agricultural income of the firm even after dissolution as if no dissolution had taken place. It is the 'income of the firm' that can be assessed even after its dissolution. Where certain income is received after the dissolution, that income would not be the income of the firm as the firm would no longer be in existence. The object of Section 27(1) is to empower the officer to assess the income of the firm which accrued prior to its dissolution even though by the

time of the assessment, the firm has stood dissolved. This fiction cannot be extended to a case where the income is received after the dissolution of the firm by the erstwhile partners. "

5. It was held that under Sec.27 dissolved firm could not be deemed to be in existence for the purpose of assessment in respect of the income derived ^{after} ~~from~~ the date of dissolution. It was further observed :

" There is nothing in this provision to indicate that where the firm is dissolved and some income is received after the dissolution in respect of agricultural produce supplied by the firm before its dissolution, the firm itself could be assessed in the year of receipt of income notwithstanding its dissolution. Even in UDDAPPA GOWDA's case referred to above, the Division Bench dealing with the explanation to Section 30(2) which had been added by means of an amendment has held that no where the explanation creates a fiction about the Hindu undivided family being in existence for the purpose of the said income deemed to have been received by it and that in the absence of such a specific provision it was not possible for the Court to supply the omission, since the statute in question is a taxing provision. In the instant case also a legal fiction regarding

regarding the continuance of the firm even after its dissolution for the purpose of assessing it in respect of income received after the date of its dissolution cannot be spelt out from Section 26(4). The amendment effected by Act 10 of 1987 has not in any way changed the legal position with regard to the point at issue and the Agricultural Income tax Officer could not have relied on the amended section 26 to assess the dissolved firm after its dissolution in respect of the income received from the Coffee Board though it related to the supply of agricultural produce before the date of dissolution. In the light of this conclusion Section 13 of Act 10 of 1987 dealing with validation cannot be of any help to the respondents. "

6. In view of this judgment Section 26(4) along with its explanation was added with retrospective effect.

7. The contention of the learned Counsel for the petitioners is that the retrospective amendment is ultra vires of the Constitution and that explanation to Sec.26(4) is contrary to the main section. Even under the definition of person under Sec.2(p) recipient is made liable for tax and as such the

the fiction created by the explanation is beyond the main provisions of Sec.26(4) of the Act.

8. I have considered the arguments of the learned Counsel for the parties. So far as the retrospective operation of the section is concerned it may be observed that it was because of the defects pointed out by this Court the legislation with retrospective effect was made. To make a law retrospective or prospective is the prerogative of the legislature. Such an action cannot be considered to be mala fide, without jurisdiction or against the principles of any provisions of the Constitution and the present amendment is only corrective legislation and has not declared any substantive liability for the first time. The defects which were pointed out by this Court have only been rectified and therefore the contention that it is contrary to the principles laid down by this Court case of ENTERTAINMENT TAX OFFICER-I & ANR. vs. AMBAE PICTURE PALACE (96 STC 338) has no substance.

9. The second contention which has been raised to Sec. is that explanation/26(4) fixes a liability on the dissolved firm whereas Sec.26(4) has casted that liability on the recipient and as such the

provisions of explanation are beyond the scope of the main section and an uncertainty regarding the person on whom tax has to be levied has been created.

10. The Apex Court in the case of GOVIND SARAN-GANGASARAN vs. COMMISSIONER OF SALES TAX & ORS. (1985- 60 STC page 1) have made the following observations :

" The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the ~~measure~~ or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity. "

If the contention of the learned counsel for the petitioners is examined in the light of the above

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judgment, then it has to be seen that there should be a clear indication of the person on whom the levy of tax is sought to be imposed. Section 3 of the Act is the charging section which fixes the liability of tax on agricultural income of the previous year on every person. The definition of 'person' has been given in clause 2(p) as reproduced above. This definition of 'person' takes within its ambit individual or association of persons and enlarging the scope by using the words 'and includes firm, company, association of individuals whether incorporated or not have been included therein.' The recipient of income from a firm or association of persons which is dissolved or which has discontinued the business through which agricultural income is received is also deemed to be 'person.' The agricultural operations were carried on during the time when the firm was in existence but the full payment of the crop were not received during its existence. Such payments now are sought to be recovered by this amendment of 1997, by Act 18/97. The Act has validated assessments as well. The word 'recipient' in Section 26(4) has to be read with its qualifying words " in the total income of the

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person who carried on the business had such sum been received before such discontinuance or dissolution." If the entire language is taken into consideration, then even Sec. 26(4) has contemplated assessment of that dissolved firm. It may also be added that explanation has only clarified the main provision and have not gone beyond the scope of Section 26(4). The scope of explanation was considered by the Apex Court in S. SUNDARAM PILLAI vs. V.R. PATTABIRAMAN (AIR 1985 S.C.582) as under :

" The object of an Explanation to Statutory provision is-

- (a) to explain the meaning and intentment of the Act itself.
- (b) where there is any obscurity or vagueness in the main enactment to clarify the same so as to make it consistent with the dominant object which it seems to subserve.
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation in order to suppress the mischief

and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same. "

In the case of **C. A. ABRAHAM** vs. INCOME TAXOFFICER, KOTTAYAM & ANR. (1961- 41 ITR 425) the question regarding imposition of penalty ~~after~~ the dissolution of the firm was considered and it was held that the provisions for imposition of penalty is as a part of the machinery for assessment of tax liability.

11. In COMMISSIONER OF INCOME TAX, ANDHRA PRADESH vs. RAJA REDDY MALLARAM (1964- 51 ITR 285), after the dissolution of association of persons, service of notice on one of its members was the subject matter of dispute , whether it can be enforced against the other members who were not served. It was held that what can be assessed is the income of the association received prior to its dissolution and the members of the association would be jointly and severally assessed thereto in their capacity as members of the association. For the purpose of such assessment the procedure is that

applicable for assessment of income of association as if it had continued. The contention that the other members had not received the notice was not accepted. The charging provision has created the liability and it was only because of the interpretation which have been taken by this Court earlier that a dissolved firm is not liable to assessment after its dissolution in respect of the income of the pre-dissolved period, the present amendments were made. The charge which has been created by Section 3 of the Act has to be implemented by the machinery section 26(4). Therefore it has to be considered ~~as~~ the dissolved firm/association of persons which is made liable after its dissolution in respect of its pre-dissolved agricultural operation, the income of which was not received during its existence. The definition of 'person' also does not go contrary to the observations made above and the word 'recipient' was also sought to be interpreted as dissolved/discontinued firm or association. Learned Counsel for the petitioners have not been able to point out a single case where the assessments have been made in the hands of recipient other than dissolved/discontinued

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firm or association. If that be the ^{position} ~~decision~~ then those orders will be considered as non est and the assessments have to be made of the dissolved firm deeming it to be in existence for the purpose of assessment.

12. The contention that the explanation has gone contrary to the main section is not found in accordance with the provisions of the section as observed above. Besides, that in the case of B.K. GOPAL vs. THE ASST.COMMISSIONER OF AGRICULTURAL INCOME TAX (W.P.1669 to 1691/96) disposed of on 25-2-1997, the explanation to Section 30 was assailed. This Court observed:

" By reason of the Explanation added, it has been made clear that before the partition of a Hindu undivided family or branch or an Aliyasanthana family or Marumakkattayam tarwad or tavazi hitherto assessed as undivided the crop is harvested and disposed off, but full payment has not been received or such crop or the crop is harvested and not disposed off, the income from such crop, shall notwithstanding the partition, be deemed to be the income of the Hindu undivided family or branch or the Aliyasanthana family or the Marumakkattayam tarwad or the tavazi for the year or years

in which it is received or is receivable, and (the Hindu undivided Family or branch or the Aliyasanthana Family or the Marumakkattayam tarvad or tavazi shall be deemed to be in existence for such year or years, as such income) shall be assessed as the income of such family or branch or Aliyasanthana family or Marumakkattayam tarvad or tavazi according to the method of accounting regularly employed by it immediately before such partition."

It was further observed thus :

" In the Explanation it is set forth that in respect of pre-partition income, which is received after partition in respect of certain crops, such income should be treated as income in the hands of the erstwhile HUF. It is clearly intended to bring into existence for the purposes of assessment the HUF or such entity referred to in the Explanation. Thus, the defect pointed out by this court in KENCHE GOWDA's case on the basis of the expression used under Sec.30(2), the Explanation as in existence then and the one that was dealt with in UDDAPPA - GOWDA's case, we must hold that the Explanation now introduced by Act No.18 of 1994 were several defects pointed out in those two decisions. Thus, the defects pointed out stood cured. "

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The validity of the explanation was upheld.
Therefore, this contention also has no force.

13. This case has also taken into consideration the decision given by this Court in C.R. UDDAPPA GOWDA vs. STATE OF KARNATAKA (WP.Nos.16845 to 16847/87- 174 ITR 389) where it was pointed out that there was no machinery under the Act for the purpose of bringing to tax the supplementary receipts in the hands of the erstwhile HUF after partition. It was contended that the amended Explanation to Sec.30(2) of the Act is in conflict with Section 26(4) of the Act and even the procedural formalities have not been properly resorted to by the Assessing Authority in terms of Section 30(2) of the Act.

14. In the present case the defect as pointed out in L.P. CARDOZA's case were kept in view to bring the amendment as mentioned in the statement of objects and reasons and therefore the ruling of the Division Bench is directly applicable to the facts of the present case.

15. It is mentioned that the persons who are following mercantile system are not affected by this amendment and it is only those persons who have followed cash system have been liable

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for its retrospective amendment. This contention is also devoid of any force inasmuch as those persons who are following the mercantile system have already paid tax in respect of the income which has become due, but not received. It is only in the case of cash system accounts that this payment was not made at the time when harvested goods were given and as such there is no violation of the provisions of Article 14 of the Constitution of India.

16. In GANGA SUGAR CORPORATION LTD vs. STATE OF U.P. (1980-45 STC 36) it was observed:

" Article 14, a great right by any canon, by its promiscuous forensic misuse, despite the Dalmia decision, AIR 1958 SC 538, has given the impression of being the last sanctuary of losing litigants. In the present case, the levy which is uniform on all sugarcane purchases, is attacked as ultra vires, on the score that the sucrose content of various consignments may vary from place to place, the range of variation being of the order of eight to ten per cent and yet a uniform levy by weight on these unequals is sanctioned by the Act. Price of cane is commended as the only permissible criterion for purchase tax. The whole case is given away by the very

circumstance that, substantially, the sucrose content is the same for sugar-cane in the State, the marginal difference being too inconsequential to build a case of discrimination or is blamable on the old machinery. Neither in intent nor in effect is there any discriminatory treatment discernible to the constitutional eye. Price is surely a safe guide but other methods are not necessarily vocational. It depends. Practical considerations of the administration, traditional practices in the trade, other economic pros and cons enter the verdict but, after a judicial generosity is extended to the legislative wisdom, if there is writ on the statute perversity, 'madness' in the method or gross disparity, judicial credulity may snap and the measure may meet with its funeral.

Even so, taxing statutes have enjoyed more judicial indulgence. This court has uniformly held that the classification for taxation and the application of Article 14, in that context, must be viewed liberally not meticulously. We must always remember that while the executive and legislative branches are subject to judicial restraint, the only check upon our exercise of power is our own sense of self-restraint."

The following observations in MURPHY MATCH WORKS- vs.



ASST. COLLECTOR OF CENTRAL EXERCISE (45 STC 49)

may be seen:

" Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the court will be reluctant and perhaps illequipped to investigate. In this imperfect world perfection even in grouping is an ambition hardly ever accomplished. In this context, we have to remember the relationship between the legislative and judicial departments of Government in the determination of the validity of classification. Ofcourse, in the last analysis courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in where even the Legislature warily treads."

In KHYERBARI TEA CO.LTD vs. STATE OF ASSAM (AIR 1964

S.C. 925) it was observed at page 941 thus :

"... the Legislature which is competent to levy a tax must inevitably be given full freedom to determine which articles should be taxed, in what manner and at what rate : vide Raja Jagannath Baksh Singh v. State of U.P (1962) 46 ITR 169; (1963) 1 SCR 220 :AIR 1962 SC 1563. It would be idle to contend that a State must tax everything in order to tax something. In tax matters, the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably. The Supreme Court of the United States of America has been practical and has permitted a very wide latitude in classification has been practical and has permitted a very wide latitude in classification for taxation.' Willis on 'Constitutional Law', page 587. This approach has been approved by this court in the case of East India Tobacco Co. v.State of A.P.(1963) 1 SCR 404 at page 409; AIR 1962 SC 1733 at page 1735.

It is, of course, true that the validity of tax laws can be questioned in the light of the provisions of articles 14, 19 and 301 if the said tax directly and immediately imposes a restriction on the freedom of trade; but the power conferred on this court to strike down a taxing statute if it contravenes the provisions of articles 14, 19 or

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301 has to be exercised with circumspection, bearing in mind that the power of the State to levy taxes for the purpose of governance and for carrying out its welfare activities is a necessary attribute of sovereignty and in that sense it is a power of paramount character. In what cases a taxing statute can be struck down as being unconstitutional is illustrated by the decision of this court in K.T. Moopil Nair. v. State of Kerala (1961) 3 SCR 77; AIR 1961 SC 552. In that case, a careful examination of the scheme of the relevant provisions of the Travancore-Cochin Land Tax Act (No.15 of 1955) satisfied this court that the said Act imposed unreasonable restrictions on the fundamental rights of the citizens, conferred unbridled power on the appropriate authorities, introduced unconstitutional discrimination and in consequence, amounted to a colourable exercise of legislative power. It is in regard to such a taxing statute which can properly be regarded as purely confiscatory that the power of the court can legitimately invoked and exercised... "

In KHANDIGE SHAM BHAT v. AGRL. ITO -(1963)48 ITR (SC) 21 also the provisions of Article 14 of the Constitution with reference to tax laws were examined and it was observed thus :

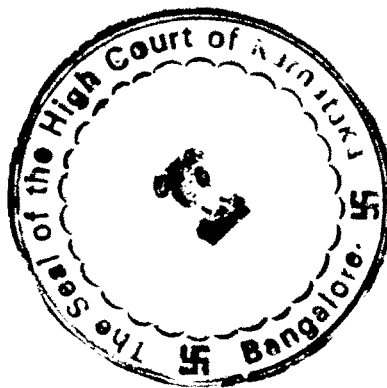


"....in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of 'wide range and flexibility' so that it can adjust its system of taxation in all proper and reasonable ways."

In view of the above observations of the Supreme Court, plea of violation of Article 14 of the Constitution has no force.

17. The writ petitions have no force and accordingly dismissed.

Sd/-
JUDGE



knpp/-